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May 31, 2004

Docket Management Facility
U.S. Department of Transportation
400 Seventh St., S.W.
Nassif Bldg., Room PL-401
Washington, DC 20590-0001

RE: Docket No. NHTSA-04-17326 - 3

Dear Sir or Madam:

The Commonwealth of Pennsylvania, Department of Transportation (PENNDOT) has reviewed the Notice of Proposed Rulemaking (NPRM), "Procedures for Participating in and Receiving Data from the National Driver Register Problem Driver Pointer System," issued March 31, 2004.

PennDOT supports the use of the National Driver Register (NDR) and the Commercial Driver License Information System (CDLIS) for the following licensing actions:

- NDR and CDLIS checks when licensing commercial drivers. The NDR check ensures that the applicant for a commercial license does not have a suspension, revocation, or cancellation of his or her driving privilege that would make the applicant ineligible for the commercial product. The CDLIS check ensures that the applicant has not obtained a commercial driver's license (CDL) elsewhere.
- CDLIS checks when initially licensing or renewing non-commercial drivers. When issuing or renewing a noncommercial license, CDLIS it is a very effective tool in detecting commercial drivers who attempt to secure more than one license. Through the CDLIS inquiry alone, states are able to determine whether the applicant has been issued a CDL, and whether the CDL has been suspended, revoked, or cancelled. All states are required to collect the Social Security Number of commercial license applicants, and this information is available for every CDL holder in the nation, ensuring that each CDL record has a unique identifier. The unique identifier ensures that identity issues are easily resolved for applicants who have common names. **The CDLIS check alone enforces the requirement that commercial motor vehicle operators have only one license.**
- PennDOT also uses the NDR inquiry for all new applicants for Pennsylvania noncommercial driver licenses. Pennsylvania law prohibits the issuance of a driver's license to any individual whose driving privilege is suspended or revoked in any other state for any reason. The NDR inquiry enables PennDOT to comply with this important provision of state law.

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Although we support some of the provisions of the Proposed Rule, PennDOT opposes the following provisions and respectfully requests that the Proposed Rule be withdrawn. Our specific comments follow.

1. The requirement that a commercial motor vehicle operator hold only one license is enforced when states simply complete CDLIS checks for CDL issuance and renewals, as well as noncommercial license issuance and renewals. Requiring NDR checks for noncommercial license renewals does not further the interest of commercial motor vehicle safety.

The NDR inquiry for noncommercial license renewal is not needed to determine whether or not the driver holds a commercial driver's license elsewhere and is not related to commercial motor vehicle safety.

2. The lack of a relationship to commercial motor vehicle safety is particularly troublesome because NDR checks for noncommercial drivers are extremely labor-intensive and cumbersome to administer. There is no unique identifier required for these records.

The CDL program recognizes the importance of a unique identifier, and requires the Social Security Number (SSN) for each commercial driver. NDR does not require SSN, and relies on "possible matches" based on similar names and similar dates of birth. Consequently, every driver with a common name (e.g. John Smith, Mary Johnson, etc.) always has "possible matches" with individuals who have suspensions or revocations elsewhere. Without the SSN, states are frequently forced to require noncommercial license applicants to prove they are not the person who shares the same, or similar, name and date of birth. However, frequently these applicants end up in a "Catch 22" situation because the other state won't release the information regarding the suspension because of privacy rules. Resolution of these issues requires excessive manual intervention and research because SSN is not required for NDR participation.

3. The proposed regulation intrudes upon the traditional police power of a state to license its own private, noncommercial drivers. This is a serious Federalism concern.

Traditionally, under their police powers, states have had the right to license noncommercial drivers. Under the Commerce Clause of the U.S. Constitution, Congress has the power to regulate activities affecting interstate commerce. Without any indication that there is a need to check all private, noncommercial driver license renewals on NDR, the Proposed Rule attempts to regulate driver licensing decisions that traditionally have been made by the states.

4. The proposed rule exceeds the authority granted to NHTSA in the NDR enabling legislation. Federal law explicitly requires states to only initially notify NHTSA of its intention to participate. It does not provide the authority to require multiple notifications of certifications of participation.

A regulation issued pursuant to a statutory grant of authority may not exceed the regulatory authority conferred on the agency by the statute. NDR's enabling statute establishes that a State may participate in the NDR by submitting a **single notification** "of its intention to be bound by section 30304 of this title," 49 U.S.C. §30303. However, **nothing** contained in 49 U.S.C. §30303 **gives NHTSA the authority to require multiple notifications** by a State in order for the State to continue to participate in the NDR, as required by the Proposed Rule.

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5. Pennsylvania law prohibits the issuance of a Pennsylvania driver's license to any individual whose driving privilege is suspended or revoked in another state for any reason. The Proposed Rule (Subsection (a)(2) to 23 CFR §1327.5) will limit PennDOT's ability to comply with its obligations under state law by limiting the types of suspensions states will be authorized to transmit to NDR.

The Proposed Rule undermines PennDOT's ability to comply with state law.

6. NHTSA should have submitted the proposed rule to the Office of Management and Budget (OMB) because this regulatory action has a significant impact on states.

PENNDOT has analyzed the impact of complying with the requirement to query NDR every time a driver (whether commercial or noncommercial) applies for a new or renewed driver's license. Instead of checking NDR for approximately 100,000 CDL renewals a year, PennDOT would be required to complete an NDR inquiry for over 2 million noncommercial drivers a year. PENNDOT estimates that it will have to add forty-eight (48) full time employees, at an annual cost in excess of \$2,000,000, in order to comply with this Federal mandate. This is a significant adverse impact.

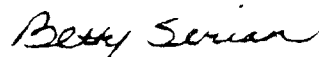
7. NHTSA DID NOT MEET ITS LEGAL REQUIREMENT TO CONSULT WITH STATE AND LOCAL OFFICIALS EARLY IN THE PROCESS OF DEVELOPING THE PROPOSED REGULATION.

Early consultation with states is a requirement of Executive Order 13132 (Federalism). By requiring NDR checks for non-commercial renewals, this Proposed Rule usurps the traditional licensing authority of the state because this provision is unrelated to commercial motor vehicle safety or the Federal authority to regulate interstate commerce. Additionally, limiting the types of suspensions reported to NDR directly interferes with Pennsylvania's statutory responsibility to deny licensure to drivers with any type of suspension in another state. There are significant issues of Federalism associated with the Proposed Rule.

Overall, the requirement that all states check all noncommercial drivers on PDPS has no impact on commercial motor vehicle safety, violates the states' right to regulate noncommercial drivers, and forces states to incur significant costs to sort through "possible matches." Additionally, the limitation of the suspension information on NDR undermines Pennsylvania's ability to comply with state law. This is an additional Federalism concern. For these reasons, PENNDOT opposes the Proposed Rule. PennDOT also respectfully submits that this Notice of Proposed Rulemaking should be withdrawn, and that consultation by NHTSA officials with affected State officials, especially in Pennsylvania, should begin immediately.

Thank you for the opportunity to offer comment.

Sincerely,



Betty Serian
Deputy Secretary
Safety Administration